JUN 16 1967
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. ~~1387~~. 73

IN THE MATTER OF JOHN RUFFALO, JR.,
Petitioner.

RESPONSE OF THE MAHONING COUNTY BAR ASSOCIATION
To Petition for a Writ of Certiorari To the United States Court of Appeals For the Sixth Circuit.

HENRY C. ROBINSON,
206 Legal Arts Centre,
Youngstown, Ohio,
President, Mahoning County Bar Association.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS.

Preliminary Statement 1

Jurisdiction 2

Questions Presented 3

Statement in Opposition to Petitioner's Brief 4

Conclusion 6

AUTHORITIES.

Selling vs. Radford, 243 U. S. 46 5

28 U. S. C., Section 1254 (1) 2

Rules of the Supreme Court:

Rule 8 ..... 3, 6

Rule 19 4

In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1187.

IN THE MATTER OF JOHN RUFFALO, JR.,
Petitioner.

RESPONSE OF THE MAHONING COUNTY BAR ASSOCIATION To Petition for a Writ of Certiorari To the United States Court of Appeals For the Sixth Circuit.

The Mahoning County Bar Association, Youngstown, Ohio, respectfully submits this Response in opposition to the prayer for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on December 29, 1966.

PRELIMINARY STATEMENT.

The Mahoning County Bar Association, as part of its statement of position and brief, adopts:

(a) The conclusion and majority opinion of the United States Court of Appeals for the Sixth Circuit: 370 F. 2nd 447 (reprinted in Petitioner's Appendix C).

(b) The judgment and majority opinion of the Ohio Supreme Court: 176 O. S. 263, 199 N. E. 3rd 393 (reprinted as Petitioner's Appendix E).

(c) The briefs of the Ohio State Bar Association filed in the United States Court of Appeals for the Sixth Circuit and this Court.

In addition to the above the Mahoning County Bar Association submits the following:

JURISDICTION.

Petitioner claims two grounds for jurisdiction:

First, to review the judgment of the United States Court of Appeals for the Six Circuit, by virtue of 28 U. S. C., Section 1254 (1), and

Second, that this Court take notice of his disbarment below and consider his brief as a showing of good cause why he should not be disbarred in this Court.

Petitioner's *first* ground for jurisdiction is not well taken. Since each Federal Court has the power to determine who may practice before it, this determination by the Court of Appeals may not be reviewed by this Court. If this Court should find that it may have some jurisdiction in this regard, that jurisdiction would be limited to whether or not the Petitioner was denied due process in the Circuit Court. To go further would be to review the merits of the judgment of the Ohio Supreme Court when it disbarred the Petitioner (176 O. S. 263). *This Court has already denied a review of that decision when it denied certiorari from that judgment in 1964* (379 U. S. 931).

Under Petitioner's *first* claimed ground of jurisdiction the only question, if any, is: Was Petitioner denied due process in the Circuit Court? It is obvious from the record now before this Court he was not.

A determination here that there was due process in the Circuit Court would be a finding that Petitioner has not shown good cause why he should not be disbarred from the Supreme Court as well, for the reason that Supreme Court Rule 8 clearly provides that if an attorney has been properly disbarred in the Circuit Court he will be "forthwith suspended from practice * * *," in the Supreme Court.

Under Petitioner's *second* claimed ground of jurisdiction, the only question is: Does Petitioner's brief show good cause why he should not be disbarred from practice before this Court? The record again very clearly shows he was thoroughly apprised of the charges and given every opportunity to show good cause why he should not be disbarred before the Circuit Court, and that court wisely ruled he had failed to do so.

To the Petitioner's *second* ground for jurisdiction we agree that this Court should take notice of his disbarment below, but respectfully aver that his brief does not provide a sufficient showing of good cause to prevent his disbarment before this Court.

QUESTIONS PRESENTED.

On page 3 of the Petition for a Writ of Certiorari two questions are raised by the Petitioner.

The *first* question the Petitioner asks this honorable Court to determine is, in essence, whether a mere segment of the facts found by the Ohio Supreme Court is sufficient grounds for that court to suspend him from practice. We are not here on an appeal from that decision; that decision was brought before this Court on Motion to Certify in 1964 and the Motion was denied. The decision of the Ohio Supreme Court is now final and no longer reviewable here

for the reason that the questions Petitioner asks here were also not before the United States Court of Appeals for the Sixth Circuit from which decree Petitioner prays for a writ of certiorari.

The *second* question raised on page 3 of the Petition for a Writ of Certiorari does not fall within the limits set forth in Rule 19 of this Court.

STATEMENT IN OPPOSITION TO PETITIONER'S BRIEF.

On the question of Petitioner's right to a review of the Circuit Court's judgment, assuming he has such a right, he is asking this Court to review everything which was before the Circuit Court and to substitute this Court's judgment for that of the Circuit Court. Such a review, we respectfully contend, is beyond the jurisdiction of this Court and beyond the rights of the Petitioner. Petitioner was given every opportunity to show good cause why he should not there be disbarred. He had full advantage of due process in the Circuit Court, *which he does not deny,* and, therefore, no review of the Circuit Court's judgment should be had and certiorari on this ground should be denied.

As to the Petitioner's showing of good cause why he should not be disbarred in the United States Supreme Court, he does not ask for a writ of certiorari, and none is required. We respectfully contend no review of all of the lower courts' opinions and the substitution of this Court's judgment for theirs is allowable. The Circuit Court has the right and power to enforce its own rules and the decision of the Ohio Supreme Court is now final.

In determining whether Petitioner is to be disbarred before this Court, this Court is limited to the same ques-

tions as those to which the Circuit Court was limited. These were prescribed by this Court in *Selling vs. Radford,* 243 U. S. 46. They are set forth on page 16 of Petitioner's Brief, on page 10 of the Circuit Court's Opinion and may be paraphrased as follows:

1. Did the state procedure fail to give Petitioner such notice or opportunity to be heard as to be wanting in due process?

2. Was there such an infirmity of proof as to the facts found in the state procedure, that this Court could not accept as final the conclusions on the subject?

3. Was there some other grave reason why this Court should not give full credit to the judgment of the Supreme Court of the State of Ohio, and thus avoid the rule requiring Petitioner to be suspended from practice in this Court?

As Petitioner's brief has failed to provide an affirmative answer to any of these questions, he has failed to show good cause why he should not be disbarred in this Court.

Unless this honorable Court finds from Petitioner's brief a violation in one of the three areas stated, we contend it is bound by its own rule to disbar the Petitioner from practice before it.

The United States Court of Appeals for the Sixth Circuit, in the exercise of due process and upon careful consideration, determined that:

1. In the Ohio State procedure there was due process;

2. There was a firm rather than an infirm proof of facts;

3. It was consistent with the Circuit Court's duty, under the facts presented, to accept as final the conclusion of the Ohio Supreme Court; and

4. There was no other reason why the Circuit Court should not allow the natural consequences of the judgment of the Ohio Supreme Court to result in the suspension of the Petitioner from practice before the Circuit Court, according to its rules.

CONCLUSION.

It is respectfully submitted that the Writ of Certiorari ought to be denied, and that this honorable Court disbar the Petitioner under authority of its Rule 8.

Respectfully submitted,

HENRY C. ROBINSON,
President, Mahoning County Bar Association.